

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENDRICK HARDIMAN,
 #0906463

Plaintiff,

vs.

REX REED, *et al.*,

Defendants.

2:10-cv-01853-RLH-LRL

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is granted (docket #1). The court now reviews the complaint.

I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a

1 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
2 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

3 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
4 provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
5 Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under
6 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,
7 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
8 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
9 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
10 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
11 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard, the
12 court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital*
13 *Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff and
14 resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

15 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings
16 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21
17 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). All
18 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner’s claims
19 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are
20 untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement of a legal
21 interest which clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*
22 fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932
23 F.2d 795, 798 (9th Cir. 1991). Moreover, “a finding of factual frivolousness is appropriate when the
24 facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially
25 noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a
26 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint

1 with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
2 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
3 1995).

4 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
5 complained of was committed by a person acting under color of state law; and (2) that the conduct
6 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689
7 (9th Cir. 2006).

8 **II. Instant Complaint**

9 Plaintiff, who is incarcerated at Clark County Detention Center, has sued the following
10 Northern Nevada Correctional Center (“NNCC”) personnel: Offender Management Division (“OMD”)
11 head Rex Reed, Associate Warden of Programs Tony Korda, head caseworker Paul Hospung, unit
12 caseworker Marcie Grey, and Doe records and timekeeper specialist in the OMD. Plaintiff claims that
13 he was illegally detained at NNCC for 137 days after the expiration of his sentence. Plaintiff alleges
14 violations of his Eighth and Fourteenth Amendment rights. However, plaintiff’s claim sounds in a state
15 law tort claim for false imprisonment; it does not implicate his constitutional rights. *See, e.g., Cousins*
16 *v. Lockyer*, 568 F.3d 1063, 1066 (9th Cir. 2009); *Streit v. County of Los Angeles*, 236 F.3d 552, 563 (9th
17 Cir. 2001). Accordingly, plaintiff’s complaint fails to state a claim for which relief may be granted; it
18 is dismissed with prejudice and without leave to amend as it is clear from the face of the complaint that
19 amendment would be futile.

20 **III. Conclusion**

21 **IT IS THEREFORE ORDERED** that plaintiff’s application to proceed *in forma*
22 *pauperis* (docket #1) without having to prepay the full filing fee is **GRANTED**; plaintiff shall not be
23 required to pay an initial installment fee. Nevertheless, the full filing fee shall still be due, pursuant to
24 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. The movant herein is
25 permitted to maintain this action to conclusion without the necessity of prepayment of fees or costs or
26 the giving of security therefor. This order granting *in forma pauperis* status shall not extend to the

1 issuance of subpoenas at government expense.

2 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
3 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay to the Clerk
4 of the United States District Court, District of Nevada, 20% of the preceding month's deposits to the
5 account of Kendrick D. Hardiman, **Inmate No. 0906463** (in months that the account exceeds \$10.00)
6 until the full \$350 filing fee has been paid for this action. The Clerk shall send a copy of this order to
7 the attention of Albert G. Peralta, Chief of Inmate Services for the Nevada Department of Prisons, P.O.
8 Box 7011, Carson City, NV 89702.

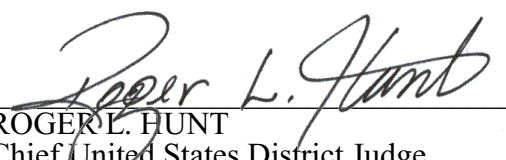
9 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
10 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the
11 Prisoner Litigation Reform Act of 1996.

12 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** the complaint (docket #1-1).

13 **IT IS FURTHER ORDERED** plaintiff's complaint is **DISMISSED** with prejudice for
14 failure to state a claim for which relief may be granted.

15 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and close
16 this case.

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18
19 DATED this 22nd day of December, 2010.

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22 
23 ROGER L. HUNT
24 Chief United States District Judge
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